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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/621,126	07/16/2003	Motasim Sirhan	AVANP-00101	3099

7590 06/25/2008  
EDWARD J. LYNCH  
PATENT ATTORNEY  
ONE EMBARCADERO CENTER  
SUITE 562  
SAN FRANCISCO, CA 94111

EXAMINER
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SEVERSON, RYAN J

ART UNIT	PAPER NUMBER
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3731

MAIL DATE	DELIVERY MODE
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06/25/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/621,126	<b>Applicant(s)</b> SIRHAN ET AL.	
	<b>Examiner</b> Ryan Severson	<b>Art Unit</b> 3731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 18 April 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 46-106, 117-120 and 136-140 is/are pending in the application.
- 4a) Of the above claim(s) 47, 48, 53-74, 76-106 and 117-120 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 46, 49-52, 75 and 136-140 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 18 April 2008 has been entered.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. **Claims 46, 49-52, 75, and 136-140 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hieshima et al. (6,063,111) in view of Ken et al.**

**(5,749,891).** Hieshima reference discloses an elongate containment member having both a wire and ribbon composition (see figure 2). The device of Hieshima is *capable* of being disposed about an aneurysm. However, Hieshima reference does not disclose a longitudinal guide member as claimed. Attention is drawn to Ken reference, which teaches a longitudinal guide member (210) with a straight proximal portion, a curved distal portion, and a port at a distal end (see figure 7B) used to contain (restrict) a coil-shaped medical device while in the guide member and allowing it to relax when

released from the guide member, thereby providing a delivery device with a substantially reduced diameter leading to a more minimally invasive procedure which reduces healing time after a surgical procedure. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use the guide member of Ken to deliver the containment member of Hieshima to minimize the invasiveness of the procedure thereby reducing healing time after a surgical procedure.

4. Regarding claims 136 and 137, the combination of Hieshima and Ken references does not disclose the guide member sized as claimed. However, it has been held that where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation.” *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955)

5. Regarding claims 138 and 139, Ken reference shows the curved portion of the guide member bends at approximately 90 degrees, thereby creating deflection points on both the inside and the outside (left and right, respectively) of the bent portion.

### ***Response to Arguments***

6. Applicant's arguments filed 18 April 2008 have been fully considered but they are not persuasive. Applicant again argues that the device of Hieshima reference is not capable of being disposed about an aneurysm. Examiner again notes that this is merely functional and the reference does not need to specifically state this function can be performed. The reference merely needs to be capable of being used as claimed. Since the entire structure of the containment member as claimed is disclosed in Hieshima reference, it is interpreted that the identical structure of Hieshima could

perform the identical function as claimed. There is no structure that would prevent such use. Further, limitations in the claims directed to the size of the aneurysm and aorta do not limit the structure of the claimed device.

7. Applicant further argues the advancement requires column strength, however there is no such language required by the claims. Applicant further states the distal end of the guide tube has a double curvature. The guide tube of Ken does have a double curvature (it is curved in cross-section, and is curved along its length). Applicant asserts that the curve of the guide tube of Ken reference would not be sufficient to guide the containment member about the exterior of an aneurysm, but provides no support for the assertion. There is no structure disclosed in either Hieshima or Ken references to prevent such use, as described in previous correspondence and again above. Again, the arguments are deemed entirely not persuasive and the rejection is maintained.

8. Examiner notes that for the rejection to be overcome, further claim language **limiting the structure of the device** will be required. Additional functional limitations and limitations drawn to the size of a portion of the anatomy do not change the structure required by the claims.

### ***Conclusion***

9. All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114.

10. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

11. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ryan Severson whose telephone number is (571)272-3142. The examiner can normally be reached on Monday - Friday 8:30-5:00.

13. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Todd Manahan can be reached on (571) 272-4713. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3731

14. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/R. S./

Examiner, Art Unit 3731

/Todd E Manahan/

Supervisory Patent Examiner, Art Unit 3731